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7 **UNITED STATES DISTRICT COURT**
8 **DISTRICT OF NEVADA**
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10 RONALD KWAME GAINES,

11 Plaintiff,

12 v.

13 CHERYL BURSON, *et al.*,

14 Defendants.
15

Case No. 2:09-CV-02326-KJD-RJJ

ORDER

16 Presently before the Court is Plaintiff's Objections to Magistrate's Denial of Plaintiff's
17 Motion to Stay Response to Motion to Dismiss (#37). Defendant Burson filed a response in
18 opposition (#38). Also before the Court is Plaintiff's Motion to Strike (#39). Having read and
19 considered the motion to strike it is denied.

20 The Court finds that the Magistrate's Order (# 36) is neither clearly erroneous nor contrary to
21 law under Federal Rule of Civil Procedure 72(a). See 28 U.S.C. § 636(b)(1)(A). This Court does
22 not have a definite and firm conviction that a mistake has been made. See Weeks v. Samsung Heavy
23 Indus. Co. Ltd., 126 F.3d 926, 943 (7th Cir. 1997). Plaintiff does not need discovery to respond to
24 the legal issues raised in Defendant Burson's motion to dismiss. The consideration of affidavits and
25 the grievances filed with prison officials does not convert the motion to one for summary judgment.
26 In considering motions to dismiss based on an alleged failure to exhaust administrative remedies, the

1 Court may consider matters outside the allegations of the pleadings. Therefore, Plaintiff's
2 Objections are denied. Plaintiff must file an opposition to Defendant's motion to dismiss within
3 fourteen (14) days of the entry of this order, or the Court will dismiss the complaint.

4 Accordingly, IT IS HEREBY ORDERED that Plaintiff's Objections to Magistrate's Denial of
5 Plaintiff's Motion to Stay Response to Motion to Dismiss (#37) are **DENIED**;

6 IT IS FURTHER ORDERED that Plaintiff's Motion to Strike (#39) is **DENIED**.

7 DATED this 21st day of November 2011.

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11 Kent J. Dawson
12 United States District Judge
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